

REMARKS

Applicants thank the Examiner for the very thorough consideration given the present application. Claims 1-9 are currently pending in this application. No new matter has been added by way of the present amendment. For instance, the amendment to claims 1 and 6 is supported by the Specification at page 4, lines 19-21, page 10, lines 25-28, page 11, lines 1-7, page 20, lines 15-17 and page 24, lines 2-7. Accordingly, no new matter has been added.

In view of the amendments and remarks herein, Applicants respectfully request that the Examiner withdraw all outstanding rejections and allow the currently pending claims.

Substance of Interview

Applicants thank the Examiner for the time, helpfulness and courtesies extended to Applicants' representatives during the Interview of May 15, 2007. The assistance of the Examiner in advancing prosecution of the present application is greatly appreciated. In compliance with M.P.E.P. § 713.04, Applicants submit the following remarks.

The Interview Summary form prepared by the Examiner on May 15, 2007 amply summarizes the discussions at the Interview. The outstanding rejections under 35 U.S.C. §§ 102(b) and 103(a) were discussed. A proposed claim amendment was submitted for the Examiner's review. The Examiner agreed that the proposed claim language would remove U.S. 6,166,285 (Schulte) as a reference.

Information Disclosure Statement

The Examiner had previously indicated that the listing of references in the specification represented an improper information disclosure statement and, thus, said references had not been considered by the Office (*see* Office Action dated July 6, 2006).

A proper Information Disclosure Statement was submitted on October 31, 2006. However, the Examiner has failed to consider the IDS and make the references therein of record.

Accordingly, Applicants respectfully request that the Examiner considers and makes of record the references cited therein.

Issues Under 35 U.S.C. § 102(b)

Claims 1-4 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Schulte et al. (U.S. 6,166,285) (hereinafter Schulte '285). Applicants respectfully traverse.

The Examiner asserts that Schulte '285 discloses a diaper having an impermeable back sheet/outer layer and a permeable top sheet covering an absorbent core and forming a barrier cuff. The Examiner further asserts that first and second skin care compositions are disposed on each barrier cuff and on the top sheet, wherein the compositions comprise different agents "to provide unique skin care benefits to different areas of the wearer". Furthermore, the Examiner asserts that the first skin care composition is disposed above the second skin care composition.

Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of anticipation. For anticipation under 35 U.S.C. § 102, the reference must teach each and every aspect of the claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present. The fact that a certain result or characteristic may occur or be

present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993). To establish inherency, the extrinsic evidence "must make clear that the missing descriptive matter is necessarily present". *In re Robertson*, 169 F.3d 743, 49 USPQ2d 1949 (Fed. Cir. 1999). The mere fact that a certain thing may result from a given set of circumstances is not sufficient. *Id.*

The present invention is directed to an absorbent article, wherein a water-soluble skin care agent and an oily skin care agent are applied on a surface of the article. The oily skin care agent is applied directly on the water-soluble skin care agent, so that at least a portion of the oily skin care agent is transferred to the skin of the wearer before the water-soluble skin care agent is transferred. Transfer of the oily skin care agent suppresses direct contact of excretions. The water-soluble skin care agent has high water solubility or water dispersibility, so that it is easily released from the absorbent article and into the skin when it comes into contact with excretions. Skin rash occurrence is greatly diminished, as evidenced by Applicants' Tables 1-4.

Contrary to the Examiner's assertion, Schulte '285 does not teach or suggest a first skin care composition disposed on a second skin care composition. As is clear from Figure 7 of Shulte '285, a first skin care composition (72) is disposed on a channel portion of the article. A second skin care composition (72') is disposed on a flap portion. A third skin care composition (72'') is disposed on the topsheet (*see* column 19, lines 31-47). Furthermore, Schulte '285 discloses that the formulation of skin care compositions 72, 72' and 72'' is the same (*see* column 19, lines 43-44). Clearly, even if skincare compositions 72, 72' and 72'' were different, Schulte '285 does not teach or suggest applying one directly on another, but rather applying them on different areas of the absorbent article.

Clearly, Schulte '285 fails to explicitly or implicitly teach each and every aspect of the claimed invention. Accordingly, this rejection is improper.

Reconsideration and withdrawal of this rejection are thus respectfully requested.

Issues Under 35 U.S.C. § 103(a)

Claims 5-9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Schulte '285 in view of Hoshino et al. (U.S. 6,685,953) (hereinafter Hoshino '953) and further in view of Ptchelintsev et al. (U.S. 5,834,513) (hereinafter Ptchelintsev '513). Applicants respectfully traverse.

The Examiner asserts that the difference between Schulte '285 and the present invention is "the provision that the diamide formula is specifically as claimed". The Examiner relies on Hoshino '953 and Ptchelintsev '513 to overcome this deficiency.

Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Second, there must be a reason why one of ordinary skill in the art would modify the reference or combine reference teachings to obtain the invention. *KSR Int'l Co. v Teleflex Inc.*, No. 04-1350, slip op. at 11 (U.S. April 30, 2007). A patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *Id.* There must be a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. *Id.* The "teaching, suggestion,

motivation test" is a valid test for obviousness, albeit one which cannot be too rigidly applied. *Id.* Third, there must be a reasonable expectation of success in making the invention. *In re Vaeck*. Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR Int'l Co. v Teleflex Inc.*.

As discussed above, Schulte '285 fails to teach or suggest an absorbent article comprising an impermeable back sheet/outer layer and a permeable top sheet covering an absorbent core and forming a barrier cuff, wherein a water-soluble skin care agent is disposed on predetermined regions of the article and an oily skin care agent is disposed directly on the water-soluble skin care agent. Hoshino '953 and Ptchelintsev '513 fail to cure these deficiencies.

Hoshino '953 is directed to external preparation compositions comprising a diamide derivative. Hoshino '953 does not disclose the addition of this derivative to absorbent articles, or the combination of this composition with a water-soluble skin care agent.

Ptchelintsev '513 is directed to compounds used for treating skin conditions. Ptchelintsev '513 does not disclose the addition of these compounds to absorbent articles, or the combination of these compounds with a water-soluble skin care agent.

Evidently, the cited references, alone or in combination, fail to teach or suggest every limitation of the instant invention. Accordingly, this rejection is improper.

Reconsideration and withdrawal of this rejection are thus respectfully requested.

Miscellaneous

Applicants respectfully request that the Examiner acknowledges Applicants' claim for foreign priority under 35 U.S.C. § 119.

Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and objections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance.


Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John W. Bailey, Reg. No. 32,881 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

Dated:

MAY 31 2007

Respectfully submitted,

By 

John W. Bailey
Registration No.: 32,881
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road
Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant